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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 777

PEOPLE OF THE STATE OF ILLINOIS, ex rel GARFIELD R. LEAF, County Treasurer, Ex-officio County Collector, Lake County, Illinois,

Petitioner,

v.

E. R. ORVIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

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SUBJECT INDEX

	PAGE
Index	i
Table of cases cited	ii
Petition for Writ of Certiorari	1
Summary and short statement of the matter involved	2
Statement as to jurisdiction	4
Questions presented	6
Reasons relied upon for allowance of writ	6
Prayer for writ	6
Brief in Support of Petition for Writ of Certiorari	8
Opinions below	8, 18
Jurisdiction	8
Statement of the case	9
Specification of assigned errors	9
Summary of Argument	10
Argument	11
I. Petitioner under Judicial Code is entitled to have a writ of certiorari issued	11
II. The prior judgment of the United States District Court is *res judicata* as to the matters involved in this case	12
Conclusion	15
Appendix A:	
Illinois statute regarding duties of County Collector	17

Appendix B:
Opinion of Supreme Court of Illinois 18

Appendix C:
Statute granting full faith and credit to judgment of Federal Court 27

Appendix D:
Judgment of United States District Court which Illinois Supreme Court refused to recognize..... 28

TABLE OF CASES CITED:

Crescent City etc. Co. v. Butchers Union etc., 120 U. S. 141, 30 L. ed. 614 ..... 6, 12

Dupasseur v. Rochereau, 88 U. S. 130, 22 L. ed. 588 ..... 6, 12

Harmon v. Auditor of Public Accounts, 123 Ill. 122, 13 N. E. 161 ..... 13, 14

Motlow v. Missouri, 295 U. S. 97, 79 L. ed. 1327..... 6, 12

Pear v. City of East St. Louis, 273 Ill. 501 at 506, 113 N. E. 60 at 62 ..... 13, 14

People v. C. B. & Q. R. R. Co., The, 247 Ill. 340 at 345, 93 N. E. 422 at 424 13

People v. Clark, 296 Ill. 46, 129 N. E. 583 13

People v. Ford, 289 Ill. 550, 124 N. E. 549 ..... 13, 14

People v. L. & N. R. R. Co., 350 Ill. 274 at 277-278; 183 N. E. 233 at 235 13

People v. Orvis, 358 Ill. 408, 193 N. E. 213 ..... 2, 12

People v. Orvis, 374 Ill. 536, 30 N. E. (2) 28 ..... 4, 5, 8, 18

Stoll v. Gottlieb (1938), 305 U. S. 165, 83 L. ed. 104.... 6, 11, 13

Worley v. Idleman, 285 Ill. 214 at 221, 120 N. E. 472 at 475 13

STATUTES:

Illinois Revised Statutes, 1939, Chapter 120, Section 706 ..... 5, 17

Judicial Code, Section 237 (b), 28 U. S. C. A. 344 (b) 4, 8, 10, 11

Revised Statutes, Section 905, 28 U. S. C. A. 687 ..... 5, 9, 12, 27

Validating Act of General Assembly of State of Illinois, effective July 1, 1935 ..... 2, 21, 22

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Petitioner,

v.

E. R. ORVIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, People of the State of Illinois, *ex rel* Garfield R. Leaf, County Treasurer, *Ex-officio* County Collector, Lake County, Illinois, respectfully prays for the issuance of a writ of certiorari herein, directed to the Supreme Court of the State of Illinois, to review a certain final decision of said Supreme Court of the State of

Illinois, the opinion and decision having been rendered and filed on October 11, 1940, and a petition for rehearing in said matter having been denied on December 4, 1940. A certified transcript of the record in this case, including the proceedings in the Supreme Court of Illinois, together with a supporting brief annexed hereto, are filed herewith in this Court within three (3) months after denial of said petition for rehearing by said Supreme Court of the State of Illinois.

I.

Summary and Short Statement of the Matter Involved.

Grant Community High School District No. 124, in Lake County, Illinois, issued $54,000 Funding Bonds in 1931, to pay a judgment entered against it on account of material and equipment furnished in the construction of a schoolhouse (R. 18, 19). Respondent filed objections in the County Court of Lake County, Illinois, to taxes extended against his property in the year 1932 to pay interest on said bonds. Upon hearing, the County Court sustained the tax but on appeal to the Supreme Court of Illinois, the tax was held void. (*People* v. *Orvis*, 358 Ill. 408, 193 N. E. 213). After this decision the General Assembly of the State of Illinois passed an act validating the bonds which became effective July 1, 1935 (R. 36, 37 and pages 21-22, Appendix B).

In 1936 The Ohio National Life Insurance Company, the owner of certain of the bonds, brought suit against the School District in the District Court of the United States for the Northern District of Illinois, Eastern Division No. 45263, to recover judgment for past due interest on said bonds (R. 20, 26-29). In the complaint filed the validating

act was set up (R. 28), and by the answer the validity of the bonds and the validating act were placed in issue (R. 29-30). The District Court acquired jurisdiction of the parties, the subject matter and the cause. On June 30, 1936, after a full hearing before the Court, judgment was entered in favor of the insurance company for the face amount of all interest coupons then past due (R. 30). See Appendix D, page 28. The School District did not appeal from said judgment. Subsequently the School District paid the judgment (R. 22).

Thereafter, in 1939, the petitioner moved the County Court of Lake County, Illinois, for a judgment against the property of the respondent by reason of his failure to pay a tax extended against his property for the year 1938 to pay interest on said bonds (R. 1, 34). The respondent objected to the tax on the ground that the bonds were void (R. 2-3). Petitioner thereupon set up the District Court judgment of June 30, 1936 (R. 30), see Appendix D, page 28, and contended that it was an adjudication of the validity of the bonds (R. 20). The County Court of Lake County, Illinois, sustained the tax (R. 25). Appeal was prayed to the Supreme Court of the State of Illinois (R. 25). In that Court petitioner again contended that the validity of the bonds was adjudicated by the United States District Court case, that such judgment was *res judicata* as to the validity of the bonds, and that said judgment was binding on the taxpayers of the School District (R. 35). The Supreme Court of Illinois refused to recognize the District Court judgment and stated, "this court cannot recognize the claim of appellees [the County Collector and Petitioner herein] that the decision of the Federal court is controlling here" (R. 40). As a result, on October 11, 1940, the Supreme Court of Illinois overruled the County Court and reversed and remanded the cause. The opinion was modified and the petition for rehearing was denied on December 4, 1940 (R. 47).

This petition for certiorari is filed to procure a review of this decision of the Illinois Supreme Court.

II.

Basis on Which it is Contended the Supreme Court of the United States Has Jurisdiction to Review the Judgment in Question.

The jurisdiction of this Court is based on Section 237 (b) of the Judicial Code (28 U. S. C. A. 344 (b)) which reads in part as follows:

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination * * * any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had * * * where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of or commission held or authority exercised under, the United States; * * *"

1. The decision of the Supreme Court of the State of Illinois in this case of *People* v. *Orvis*, 374 Ill. 536, 30 N. E. (2) 28, rendered October 11, 1940, and as modified on denial of petition for rehearing December 4, 1940, is a final judgment of the highest Court of the State of Illinois in which a decision could be had. Said decision held certain bonds void and the tax levied to pay the same uncollectible.

2. The judgment of the United States District Court, for the Northern District of Illinois, Eastern Division, in the case of *Ohio National Life Insurance Company* v. *Grant Community High School District No. 124, Lake County, Illinois*, rendered June 30, 1936, which held that the bonds in question are valid, is a right, specially set up by peti-

tioner under authority exercised under the United States. A duly authenticated copy of said judgment was introduced at the hearing in this case before the County Court of Lake County, Illinois (R. 20, Appendix D, page 28).

3. It was the duty of the petitioner to set up the District Court judgment adjudicating the validity of the bonds since he is the officer designated by law to collect taxes for said School District (Chap. 120, Sec. 706, Illinois Revised Statutes 1939). See Appendix A.

4. The petitioner introduced in evidence said District Court judgment holding the bonds valid (R. 20), and called it to the attention of the County Court, and also called it to the attention of the Illinois Supreme Court, both on appeal (opinion of Court, 374 Ill. 536 at 538, 30 N. E. (2) 28 at 29, Appendix B, pages 17-18), and in the petition for rehearing (R. 42-44), nevertheless, the Supreme Court of Illinois expressly refused to recognize said District Court judgment.

5. The failure of the Supreme Court of Illinois to give full faith and credit to said District Court judgment, using language as follows:

> "this court cannot recognize the claim of appellees that the decision of the federal court is controlling here.",

is in violation of Revised Statutes, 905, 28 U. S. C. A., 687, which requires that judgments of the Federal courts in a state shall have the same dignity in the courts of that state as those of its own courts.

6. The failure of the Supreme Court of Illinois to recognize the judgment of the United States District Court rendered June 30, 1936, is contrary to the following deci-

sions of this Court: *Stoll* v. *Gottlieb* (1938), 305 U. S. 165, 83 L. ed. 104; *Dupasseur* v. *Rochereau*, 88 U. S. 130, 22 L. ed. 588; *Crescent City, etc. Co.* v. *Butchers Union, etc.*, 120 U. S. 141, 30 L. ed. 614, and *Motlow* v. *Missouri*, 295 U. S. 97, 79 L. ed. 1327.

III.

The Questions Presented.

1. May the Supreme Court of the State of Illinois hold certain bonds void in a tax objection case by expressly refusing to recognize the validity of a prior judgment entered by the District Court of the United States sustaining the validity of the same bonds where said District Court had jurisdiction of the parties, the subject matter and the cause?

2. Is a judgment of the District Court holding certain school bonds valid, *res judicata* as to the validity of said bonds so as to bind taxpayers of the school district in a subsequent proceeding attacking the validity of the tax extended to pay said bonds?

IV.

Reasons Relied Upon for Allowance of the Writ.

The Supreme Court of Illinois, in holding certain bonds void in a proceeding by the state against the taxpayer, expressly refused to recognize the validity of a prior United States District Court final judgment, holding the same bonds valid, entered in a case instituted by a bondholder against the school district, and in which such District Court had jurisdiction of the parties, the subject matter and the cause.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Court,

directed to the Supreme Court of the State of Illinois sitting at Springfield, Illinois, commanding said Court to send to this Court on a day to be designated, a full and complete transcript of the record and all proceedings of the Supreme Court of the State of Illinois had in this cause, to the end that this cause may be reviewed and determined by this Court; that the judgment of the Supreme Court of the State of Illinois reversing and remanding the order of the County Court of Lake County, Illinois, be reversed; and that your petitioner be granted such other and further relief as may seem proper.

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